

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MACHELLE ALENE SOTELO
4515 4TH Street, #6
La Mesa, CA 91941

Registered Nurse License No. 556695

Respondent

Case No. 2011-940

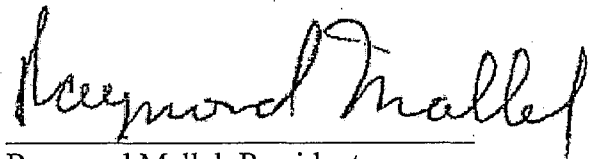
OAH No. 2011080996

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **November 28, 2012.**

IT IS SO ORDERED **October 29, 2012.**



Raymond Malle, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **MACHELLE ALENE SOTELO**
13 **4515 4th Street, #6**
14 **La Mesa, CA 91941**

15 **Registered Nurse License No. 556695**

16 Respondent.

Case No. 2011-940

OAH No. 2011080996

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
22 Board of Registered Nursing. She brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Rita M. Lane, Deputy Attorney General.

25 2. Respondent Machele Alene Sotelo (Respondent) is represented in this proceeding by
26 attorney David W. Graves, whose address is: Laturno & Graves, 613 Valley Parkway, Suite 310,
27 Escondido, CA 92025.
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1 3. On or about July 12, 1999, the Board of Registered Nursing issued Registered Nurse
2 License No. 556695 to Machele Alene Sotelo (Respondent). The Registered Nurse License was
3 in full force and effect at all times relevant to the charges brought in Accusation No. 2011-940
4 and will expire on December 31, 2012, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 2011-940 was filed before the Board of Registered Nursing (Board),
7 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
8 and all other statutorily required documents were properly served on Respondent on May 24,
9 2011. Respondent timely filed her Notice of Defense contesting the Accusation.

10 5. A copy of Accusation No. 2011-940 is attached as Exhibit "A" and incorporated
11 herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 2011-940. Respondent has also carefully read, fully
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
16 Order.

17 7. Respondent is fully aware of her legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against her; the right to present evidence and to testify on her own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

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1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 2011-940.

4 10. Respondent agrees that her Registered Nurse License is subject to discipline and she
5 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 CONTINGENCY

7 11. This stipulation shall be subject to approval by the Board of Registered Nursing.
8 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
9 Registered Nursing may communicate directly with the Board regarding this stipulation and
10 settlement, without notice to or participation by Respondent or her counsel. By signing the
11 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
12 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
13 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
14 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
15 action between the parties, and the Board shall not be disqualified from further action by having
16 considered this matter.

17 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
18 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
19 effect as the originals.

20 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
21 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
22 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
23 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
24 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
25 writing executed by an authorized representative of each of the parties.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

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1 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
2 practice as a registered nurse outside of California shall not apply toward a reduction of this
3 probation time period. Respondent's probation is tolled, if and when she resides outside of
4 California. Respondent must provide written notice to the Board within 15 days of any change of
5 residency or practice outside the state, and within 30 days prior to re-establishing residency or
6 returning to practice in this state.

7 Respondent shall provide a list of all states and territories where she has ever been licensed
8 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
9 information regarding the status of each license and any changes in such license status during the
10 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
11 license during the term of probation.

12 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
13 or cause to be submitted such written reports/declarations and verification of actions under
14 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
15 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
16 Respondent shall immediately execute all release of information forms as may be required by the
17 Board or its representatives.

18 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
19 state and territory in which she has a registered nurse license.

20 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
21 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
22 6 consecutive months or as determined by the Board.

23 For purposes of compliance with the section, "engage in the practice of registered nursing"
24 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
25 non-direct patient care position that requires licensure as a registered nurse.

26 The Board may require that advanced practice nurses engage in advanced practice nursing
27 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

28 If Respondent has not complied with this condition during the probationary term, and

1 Respondent has presented sufficient documentation of her good faith efforts to comply with this
2 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
3 extension of Respondent's probation period up to one year without further hearing in order to
4 comply with this condition. During the one year extension, all original conditions of probation
5 shall apply.

6 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
7 prior approval from the Board before commencing or continuing any employment, paid or
8 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
9 performance evaluations and other employment related reports as a registered nurse upon request
10 of the Board.

11 Respondent shall provide a copy of this Decision to her employer and immediate
12 supervisors prior to commencement of any nursing or other health care related employment.

13 In addition to the above, Respondent shall notify the Board in writing within seventy-two
14 (72) hours after she obtains any nursing or other health care related employment. Respondent
15 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
16 separated, regardless of cause, from any nursing, or other health care related employment with a
17 full explanation of the circumstances surrounding the termination or separation.

18 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
19 Respondent's level of supervision and/or collaboration before commencing or continuing any
20 employment as a registered nurse, or education and training that includes patient care.

21 Respondent shall practice only under the direct supervision of a registered nurse in good
22 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
23 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
24 approved.

25 Respondent's level of supervision and/or collaboration may include, but is not limited to the
26 following:

27 (a) Maximum - The individual providing supervision and/or collaboration is present in
28 the patient care area or in any other work setting at all times.

1 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
2 care unit or in any other work setting at least half the hours Respondent works.

3 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
4 person communication with Respondent at least twice during each shift worked.

5 (d) Home Health Care - If Respondent is approved to work in the home health care
6 setting, the individual providing supervision and/or collaboration shall have person-to-person
7 communication with Respondent as required by the Board each work day. Respondent shall
8 maintain telephone or other telecommunication contact with the individual providing supervision
9 and/or collaboration as required by the Board during each work day. The individual providing
10 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
11 patients' homes visited by Respondent with or without Respondent present.

12 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
13 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
14 or for an in-house nursing pool.

15 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
16 registered nursing supervision and other protections for home visits have been approved by the
17 Board. Respondent shall not work in any other registered nursing occupation where home visits
18 are required.

19 Respondent shall not work in any health care setting as a supervisor of registered nurses.
20 The Board may additionally restrict Respondent from supervising licensed vocational nurses
21 and/or unlicensed assistive personnel on a case-by-case basis.

22 Respondent shall not work as a faculty member in an approved school of nursing or as an
23 instructor in a Board approved continuing education program.

24 Respondent shall work only on a regularly assigned, identified and predetermined
25 worksite(s) and shall not work in a float capacity.

26 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
27 request documentation to determine whether there should be restrictions on the hours of work.

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1 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
2 successfully complete a course(s) relevant to the practice of registered nursing no later than six
3 months prior to the end of her probationary term.

4 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
5 Respondent shall submit to the Board the original transcripts or certificates of completion for the
6 above required course(s). The Board shall return the original documents to Respondent after
7 photocopying them for its records.

8 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
9 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
10 amount of \$8,263.92. Respondent shall be permitted to pay these costs in a payment plan
11 approved by the Board, with payments to be completed no later than three months prior to the end
12 of the probation term.

13 If Respondent has not complied with this condition during the probationary term, and
14 Respondent has presented sufficient documentation of her good faith efforts to comply with this
15 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
16 extension of Respondent's probation period up to one year without further hearing in order to
17 comply with this condition. During the one year extension, all original conditions of probation
18 will apply.

19 12. **Violation of Probation.** If Respondent violates the conditions of her probation, the
20 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
21 and impose the stayed discipline (revocation/suspension) of Respondent's license.

22 If during the period of probation, an accusation or petition to revoke probation has been
23 filed against Respondent's license or the Attorney General's Office has been requested to prepare
24 an accusation or petition to revoke probation against Respondent's license, the probationary
25 period shall automatically be extended and shall not expire until the accusation or petition has
26 been acted upon by the Board.

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13. **License Surrender.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

14. Therapy or Counseling Program. Respondent, at her expense, shall participate in an ongoing counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

ACCEPTANCE

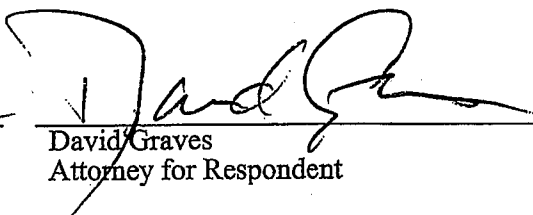
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David Graves. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

06-14-2012 Machelle Alene Sotelo
MACHELLE ALENE SOTELO
Respondent

1 I have read and fully discussed with Respondent Machel Alene Sotelo the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4 DATED: June 18, 2012


David Graves
Attorney for Respondent

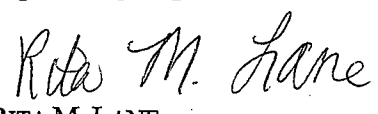
7 **ENDORSEMENT**

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
10 Affairs.

11 Dated: June 29, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


RITA M. LANE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2011-940

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE
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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-940**

12 **MACHELLE ALENE SOTELO**
13 **4515 4th Street, #6**
14 **La Mesa, CA 91941**

A C C U S A T I O N

15 **Registered Nurse License No. 556695**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about July 12, 1999, the Board of Registered Nursing issued Registered Nurse
24 License Number 556695 to Machele Alene Sotelo (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 December 31, 2012, unless renewed.

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1 (1) Formulates a nursing diagnosis through observation of the client's
2 physical condition and behavior, and through interpretation of information
3 obtained from the client and others, including the health team.

4 (2) Formulates a care plan, in collaboration with the client, which ensures
5 that direct and indirect nursing care services provide for the client's safety,
6 comfort, hygiene, and protection, and for disease prevention and restorative
7 measures.

8 (3) Performs skills essential to the kind of nursing action to be taken,
9 explains the health treatment to the client and family and teaches the client and
10 family how to care for the client's health needs.

11 (4) Delegates tasks to subordinates based on the legal scopes of practice of
12 the subordinates and on the preparation and capability needed in the tasks to be
13 delegated, and effectively supervises nursing care being given by subordinates.

14 (5) Evaluates the effectiveness of the care plan through observation of the
15 client's physical condition and behavior, signs and symptoms of illness, and
16 reactions to treatment and through communication with the client and health team
17 members, and modifies the plan as needed.

18 (6) Acts as the client's advocate, as circumstances require, by initiating
19 action to improve health care or to change decisions or activities which are against
20 the interests or wishes of the client, and by giving the client the opportunity to
21 make informed decisions about health care before it is provided.

22 COST RECOVERY

23 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

27 FACTS

28 11. In the early morning hours of March 21, 2008, Patient L.N., a 45 year-old man,
suffered a syncopal episode at home. Paramedics were called and Patient L.N. was transported
by ambulance to Sharp Grossmont Hospital at 0248 hours. At 0343 hours, Patient L.N. was noted
to be awake, with snoring respirations, severely slurred speech and unable to follow commands.
His cardiac rhythm was noted as changing and he was vomiting. Patient L.N. then went
unresponsive and an EKG showed an acute myocardial infarction. At 0400 hours, Patient L.N.
was emergently sedated and intubated. At 0444 hours, Patient L.N. arrived in the cardiac
catheterization lab and was on a transport ventilator. When Patient L.N. arrived at the
catheterization lab, Respondent was the primary registered nurse on duty. When Patient L.N. was

1 moved to the catheterization lab table, he was placed on a stationary ventilator by a respiratory
2 therapist. The respiratory therapist was then called back to the Emergency Department to help
3 with a code blue. At approximately 0500 hours, while Patient L.N. was being prepped for
4 catheterization, he developed bradycardic arrest. A doctor noted that Patient L.N.'s ventilator
5 was in the "standby" position. It was unknown how long the ventilator was in the "standby"
6 position. Patient L.N. was immediately disconnected from the ventilator and was manually
7 ventilated and CPR was initiated. Despite resuscitation efforts, Patient L.N. did not regain a
8 spontaneous pulse and was pronounced dead at 0540 hours.

9 CAUSE FOR DISCIPLINE

10 (Incompetence)

11 12. Respondent is subject to disciplinary action under Code section 2761(a)(1) for
12 unprofessional conduct in that she was incompetent in the nursing care she provided to Patient
13 L.N. on March 21, 2008, while working as a registered nurse at Sharp Grossmont Hospital.
14 Specifically, Respondent was incompetent when she failed to exercise the degree of learning,
15 skill, care, and experience ordinarily possessed and exercised by a competent registered nurse
16 when she failed to monitor the respirations of Patient L.N., who was a chemically sedated,
17 paralyzed and mechanically ventilated patient. Respondent also was incompetent when she failed
18 to ensure that Patient L.N. was receiving appropriate oxygenation while awaiting cardiac
19 intervention. The circumstances are more fully set forth in paragraph 11 above, and incorporated
20 herein by reference.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 556695, issued to
25 Machele Alene Sotelo;

26 2. Ordering Machele Alene Sotelo to pay the Board of Registered Nursing the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED:

5/24/2011

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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